

MONTANA LEGISLATIVE HISTORY

Chapter 229 ~~20~~ 2001

Bill H _____ S 323 Original bill & history ☒ c

H. Committee on Business & Labor

S. Committee on Business & Labor

Hearing Date(s) 3-14 ☒ c

Hearing Date(s) 2-13 ☒ c

3-19 ☒ c

2-14 ☒ c

_____ c

_____ c

_____ c

_____ c

Date Out _____ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

SENATE BILLS AND RESOLUTIONS

173

4/05	Revised Fiscal Note Printed		
4/06	Committee Executive Action--Bill Concurred as Amended	12	6
4/06	Committee Report--Bill Concurred as Amended		
4/06	Revised Fiscal Note Requested		
4/07	2nd Reading Concurred	75	25
4/09	3rd Reading Concurred	79	21
	Returned to Senate with Amendments		
4/11	Revised Fiscal Note Received		
4/11	2nd Reading House Amendments Not Concurred on Voice Vote	48	0
4/12	Revised Fiscal Note Printed		
4/16	Free Conference Committee Appointed		
4/17	Free Conference Committee Appointed		
4/18	Hearing		
4/18	Free Conference Committee Report Received		
4/18	Free Conference Committee Report Received		
4/18	2nd Reading Free Conference Committee Report Adopted on Voice Vote	49	0
4/19	2nd Reading Free Conference Committee Report Adopted	95	5
4/19	3rd Reading Free Conference Committee Report Adopted	50	0
4/20	Revised Fiscal Note Received		
4/20	Revised Fiscal Note Signed		
4/20	3rd Reading Free Conference Committee Report Adopted	73	27
4/21	Revised Fiscal Note Printed		
4/23	Sent to Enrolling		
4/26	Returned from Enrolling		
4/26	Signed by President		
4/26	Signed by Speaker		
4/26	Transmitted to Governor		
5/05	Signed by Governor		
5/05	Chapter Number Assigned		
	Chapter Number 586		
	Effective Date: 5/05/2001 - Section 4(1) and 9		
	Effective Date: 7/01/2001 - Sections 1-3, 4(2)-4(7), 5, 6, 8, and 10		
	Effective Date: Effective on July 1 Immediately Following the Date That the Governor by Executive Order Certifies to the Secretary of State That the Resource Indemnity Trust Fund Balance Has Reached \$100 Million and Applies to the Then-current Academic Year. The Secretary of State Shall Forward a Copy of the Executive Order to the Code Commissioner. - Section 7		

SB 323 Introduced by McNutt, et al.

LC0524 Drafter: McClure

Revise Exclusive Remedy for Worker's Compensation

1/25	Introduced		
1/26	First Reading		
1/26	Referred to Business and Labor		
2/13	Hearing		
2/14	Committee Executive Action--Bill Passed	8	1
2/14	Committee Report--Bill Passed		
2/19	2nd Reading Passed	33	17
2/20	3rd Reading Passed	35	15
	Transmitted to House		
3/03	Referred to Business and Labor		
3/14	Hearing		
3/19	Committee Executive Action--Bill Concurred	12	7
3/20	Committee Report--Bill Concurred		
3/30	2nd Reading Concurred	59	40
3/31	3rd Reading Concurred	59	40
	Returned to Senate		
4/02	Sent to Enrolling		

4/03 Returned from Enrolling
 4/06 Signed by President
 4/10 Signed by Speaker
 4/10 Transmitted to Governor
 4/12 Signed by Governor
 4/12 Chapter Number Assigned
 Chapter Number 229
 Effective Date: 4/12/2001 - All Sections

SB 324 Introduced by Harrington, et al.

LC0765 Drafter: Lane

Require Claims Against Chemical Dependency Facilities to Legal Panel

1/25	Introduced		
1/26	First Reading		
1/26	Referred to Public Health, Welfare and Safety		
2/14	Hearing		
2/14	Committee Executive Action--Bill Passed	7	0
2/15	Committee Report--Bill Passed		
2/16	2nd Reading Passed on Voice Vote	48	0
2/17	3rd Reading Passed	48	0
	Transmitted to House		
3/01	Referred to Human Services		
3/21	Hearing		
3/22	Committee Executive Action--Bill Concurred	18	0
3/22	Committee Report--Bill Concurred		
4/04	2nd Reading Concurred	96	4
4/05	3rd Reading Concurred	98	2
	Returned to Senate		
4/05	Sent to Enrolling		
4/07	Returned from Enrolling		
4/10	Signed by President		
4/11	Signed by Speaker		
4/13	Transmitted to Governor		
4/23	Signed by Governor		
4/23	Chapter Number Assigned		
	Chapter Number 370		
	Effective Date: 10/01/2001 - All Sections		

SB 325 Introduced by Mahlum, et al.

LC1203 Drafter: Everts

Revise Rural Electric and Telephone Coop Laws

1/25	Introduced		
1/26	First Reading		
1/26	Referred to Taxation		
1/31	Fiscal Note Requested		
2/06	Fiscal Note Received		
2/06	Fiscal Note Signed		
2/06	Fiscal Note Printed		
2/07	Hearing		
2/09	Committee Executive Action--Bill Passed as Amended	5	4
2/09	Committee Report--Bill Passed as Amended		
2/20	2nd Reading Passed as Amended on Voice Vote	50	0
2/21	3rd Reading Passed	49	1
	Transmitted to House		
3/03	Referred to Taxation		
3/28	Hearing		
4/02	Committee Executive Action--Bill Concurred as Amended	19	1

SENATE BILL NO. 323

INTRODUCED BY

(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE EXCLUSIVE REMEDY PROVISION IN THE WORKERS' COMPENSATION ACT TO PROVIDE AN INJURED EMPLOYEE WITH A CAUSE OF ACTION FOR DAMAGES AGAINST AN EMPLOYER OR A FELLOW EMPLOYEE WHO CAUSES INTENTIONAL INJURY; DEFINING "INTENTIONAL INJURY"; AMENDING SECTION 39-71-413, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE." *SOMERVILLE BITNEY*

WHEREAS, Montana's workers' compensation law is the exclusive remedy for an employee injured or killed in the scope of employment, as included in Article II, section 16, of the Montana Constitution and implemented by the Legislature in section 39-71-411, MCA; and

WHEREAS, the exclusive remedy provision of workers' compensation can be described as a quid pro quo exchange of rights and remedies, which is intended to relieve an injured employee of the responsibility of undertaking lengthy and expensive legal action to recover compensation for job-related injuries by proving an employer's negligence while relieving the employer of the burden of defending against work-related claims through the traditional common-law defenses of contributory negligence, assumption of risk, and the fellow servant rule to defeat the employee's claim; and

WHEREAS, in 1973, the Montana Legislature enacted section 39-71-413, MCA, which allowed an injured employee to sue a servant or employee of the employer when the injury was the result of an intentional or malicious act by the servant or employee of the injured employee's employer; and

WHEREAS, in a 2000 decision, *Sherner v. Conoco, Inc.*, 2000 MT 50, 298 Mont. 401 (2000), the Montana Supreme Court revisited the standard used for determining whether an employer's act or omission was protected under the exclusive remedy; and

WHEREAS, the court applied section 39-71-413, MCA, to employers and held that actual malice, as described in section 27-1-221, MCA, which provides that a person acts with malice if an employer has knowledge of facts or intentionally disregards facts that create a high probability of injury and deliberately acts with conscious or intentional disregard or indifference to that high probability, would be the standard applied; and

WHEREAS, the exclusive remedy provision in the Workers' Compensation Act should provide that

1 an injured employee has a cause of action for damages against an employer or the employer's employee
2 only if the employer or fellow employee causes an intentional injury.

3

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5

6 **Section 1.** Section 39-71-413, MCA, is amended to read:

7 **"39-71-413. Liability of employer or fellow employee for intentional and malicious and deliberate**
8 **acts or omissions -- additional cause of action -- intentional injury defined.** (1) If an employee ~~receives an~~
9 ~~injury is intentionally injured by an intentional and deliberate act of the employee's employer or by the~~
10 ~~intentional and deliberate act of a fellow employee while performing the duties of his employment and the~~
11 ~~injury or injuries so received by the employee are caused by the intentional and malicious act or omission~~
12 ~~of a servant or employee of his employer, then, the employee or in case of his death his~~ the employee's
13 ~~heirs or personal representatives shall, in addition to the right to receive compensation under the Workers'~~
14 ~~Compensation Act, have a right to prosecute any~~ have a cause of action ~~he may have~~ for damages against
15 ~~the servants or employees of his employer causing the injury~~ person whose intentional and deliberate act
16 caused the intentional injury.

17 (2) An employer is not vicariously liable under this section for the intentional and deliberate acts
18 of an employee.

19 (3) As used in this section, "intentional injury" means an injury caused by an intentional and
20 deliberate act that is specifically and actually intended to cause injury to the employee injured and there
21 is actual knowledge that an injury is certain to occur."

22

23 **NEW SECTION.** **Section 2. Effective date -- applicability.** [This act] is effective on passage and
24 approval and applies to injuries that occur on or after [the effective date of this act].

25

- END -

INDEX TO BILLS IN COMMITTEE

September 10, 2001

- Committee: (S) Business and Labor -

02:05 PM

SB 305 SPONSOR: Cocchiarella, Vicki SHORT TITLE: Alternative position for work comp when no position available

REFERRED ON: 01/24/2001 HEARD ON: 02/15/2001

EXECUTIVE ACTION: 02/16/2001 -Bill Passed as Amended -- VOTE: 8 - 0

FINAL DISPOSITION: 04/20/2001 Chapter Number Assigned

SB 308 SPONSOR: Harrington, Dan SHORT TITLE: Increase period of unemployment compensation

REFERRED ON: 01/24/2001 HEARD ON: 02/16/2001

TABLED ON: 02/19/2001

FINAL DISPOSITION: 02/23/2001 (S) Missed Deadline for General Bill Transmittal

SB 311 SPONSOR: Cocchiarella, Vicki SHORT TITLE: Revise occupational disease law

REFERRED ON: 01/29/2001 HEARD ON: 02/15/2001

EXECUTIVE ACTION: 02/15/2001 -Bill Passed -- VOTE: 8 - 0

FINAL DISPOSITION: 04/23/2001 Chapter Number Assigned

SB 321 SPONSOR: Mahlum, Dale SHORT TITLE: Insurance freedom of choice -- physical therapists

REFERRED ON: 02/02/2001 HEARD ON: 02/09/2001

EXECUTIVE ACTION: 02/09/2001 -Bill Passed -- VOTE: 9 - 0

FINAL DISPOSITION: 04/13/2001 Chapter Number Assigned

SB 323 SPONSOR: McNutt, Walter SHORT TITLE: Revise exclusive remedy for worker's compensation

REFERRED ON: 01/26/2001 HEARD ON: 02/13/2001

EXECUTIVE ACTION: 02/14/2001 -Bill Passed -- VOTE: 8 - 1

FINAL DISPOSITION: 04/12/2001 Chapter Number Assigned

SB 330 SPONSOR: Mahlum, Dale SHORT TITLE: Revise laws on pyramid promotional schemes

BY REQUEST OF: State Auditor

REFERRED ON: 01/26/2001 HEARD ON: 02/12/2001

EXECUTIVE ACTION: 02/12/2001 -Bill Passed as Amended -- VOTE: 7 - 0

FINAL DISPOSITION: 04/21/2001 Chapter Number Assigned

MINUTES

**MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR**

Call to Order: By **CHAIRMAN MIKE TAYLOR**, on February 13, 2001 at 8:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Taylor, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Edward Butcher (R)
Sen. Vicki Cocchiarella (D)
Sen. Sam Kitzenberg (R)
Sen. Dale Mahlum (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 357, 2/14/2001; SB 340,
2/14/2001; SB 323, 2/14/2001;
SB 421, 2/14/2001

Executive Action:

Opponents' Testimony: None

Questions from Committee Members and Responses:

SENATOR MIKE SPRAGUE asked how the amendments would be covered under the title of the bill.

Roger Halver said the title of the bill is very generic and the amendments will fall under that title.

Bart Campbell said he would check the legality of it.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 27.2}

SENATOR DALE BERRY, SD 30, HAMILTON, said it doesn't change the supervision of salespeople by the broker, except for their own personal transactions.

HEARING ON SB 323

Sponsor: WALTER MCNUTT, SD 50, SIDNEY

Proponents: John Alke, Montana Defense Trial Lawyers
Webb Brown, Montana Chamber of Commerce
Larry Jones, Attorney for Liberty Northwest
Riley Johnson, Federation of Independent Business
Leland Griffin, Montana Refining Company
Nancy Schlepp, Montana Farm Bureau
Patrick Montaban, Oil and Gas Association
Holly Franz, ASIMI
Carl Schweitzer, Chamber of Commerce
Charles Brooks, Billings Chamber of Commerce
Chris Gallus, Montana Retail Association
Kristi Blazer, Beer & Wine Wholesalers
Bob Worthington, Montana Cities and Towns
Ray Barnicoat, Montana Association of Counties
Nancy Butler, State Fund
Jacqueline Lenmark, American Insurance Association
Derek Brown, Derek Brown Construction
Mary Allen, Cenex
Linda Reed, Qwest
Robert Fisher, Oil & Gas company
Patrick Montaban, Liquor Owners Association
John Gregor, Crawford & Company

Patrick Montaban, Liquor Owners Association
John Gregor, Crawford & Company

Opponents: **Al Smith, Montana Trial Lawyers Association**
 Pete Shermer, Representing himself
 Leroy Thom, Small Business Owner, Libby
 Les Skramstad, Asbestos Victim
 Roger Sullivan, Attorney Kalispell
 Don Judge, AFL-CIO

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 0.2}

WALTER MCNUTT, SD 50, SIDNEY, said this bill comes out of a supreme court decision on exclusive remedy and Montana Worker's Compensation law. This bill would make it clear that injuries in the workplace, unless they are intentional or deliberate acts are not subject to litigation. Since 1915 the Worker's Compensation Act has provided exclusive remedy to employees for work related injuries and work related death and has been a framework for our current Worker's Comp law. He stated that the Montana Constitution says someone can't take an employer to court if the worker is covered by Worker's Comp Insurance, unless it is a deliberate act.

Proponents' Testimony:

John Alke, Montana Defense Trial Lawyers, said once employers purchase Worker's Compensation insurance they should not be held liable outside of the Worker's Comp system, unless intentional harm was done to the worker. Worker's Comp is a qui pro quo system, proof of who was at fault is not needed, and if the worker is injured by his own fault, he is covered by Worker's Comp. He stated that the Shermer case changed things, after which an intentional act with malice is sufficient to be a breach to the exclusivity rule and malice is determined by the jury, it has no definition. He said that prior to the Shermer ruling there was a no fault system, after the Shermer case there are now two systems, so that if the employee is injured through his own fault he gets Workers Comp coverage regardless of the fact his employer did nothing wrong; under Shermer if the employer is actually at fault now the employee gets not only to collect his Workers Comp, he gets to sue in district court simply by alleging that his employer committed an intentional act and allege that the jury should find that that act had malice, and malice can be both actual and implied. This effectively defeats the quid pro quo in workers compensation. The only time a worker should be able to

sue in court outside of the Workers Comp system is if the employee truly intended to injure him

Webb Brown, Montana Chamber of Commerce, said this is a critical issue to business, not only from the stand point of cost but also for the benefit of the employees. He said that businesses are now facing greater exposure to law suits and facing that exposure without any back up liability coverage. He stated taht exclusive remedy forms the very basis of Work Comp wherein employers pledge to cover the medical expenses, lost wages and other benefits following accidents or injuries received on the job. At the same time employers agreed to assign no fault of the employee or other employees in an accident or injury. Employees gave up their right to file law suits in order to have the protection. The exception has always been an intentional act directed to or at an employee. Small business are particularly vulnerable in these situations.

Larry Jones, Attorney for Liberty Northwest, said the employee gives up the right to sue and in return gets a no fault recovery, and a certain return. He further stated that the employer gave up three defenses and in turn got a limited damage system in the form of Worker's Compensation and the exclusive remedy.

EXHIBIT (bus36a07)

Riley Johnson, Federation of Independent Business, said this is the most important bill before the legislature this year for independent business people.

Leland Griffin, Montana Refining Company, said it is important for a small company like his to have a Worker's Compensation system that is known, stable and the exclusive remedy. He said he can't afford to fight legal lawsuits every time someone is hurt and that small companies can not survive under this scenario.

Nancy Schlepp, Montana Farm Bureau, said it is absolutely important for the agricultural community to have an exclusive remedy provision and she urged their support.

Patrick Montalban, Oil and Gas Association, said it would cost jobs and business if the exclusive remedy clause is not in the law.

Holly Franz, ASIMI, said she supports this bill.

Carl Schweitzer, Kalispell and Bozeman Chamber of Commerce, said he supports this bill.

Charles Brooks, Billings Chamber of Commerce, said he strongly supports this bill.

Chris Gallus, Montana Retail Association, said he supports this bill.

Kristi Blazer, Beer & Wine Wholesalers, said she supports this bill

Bob Worthington, Montana Cities and Towns, said he supports this bill.

Ray Barnicoat, Montana Association of Counties, said he supports this bill.

Nancy Butler, State Fund, said that without exclusive remedy they will have greater risk, and that cost would be passed on to the consumer.

Jacqueline Lenmark, American Insurance Association, said her companies would also put an endorsement on Workers Comp policies excluding coverage of liability for suing. She said this Sherner decision is noticed nation wide and that the number of companies writing Workers Comp in Montana will diminish if this bill is not passed.

Derek Brown, Derek Brown Construction, said the only protection an employer has is the exclusive remedy.

Mary Allen, Cenex, said exclusive remedy is an integral part of the Workers Compensation system.

Linda Reed, Qwest, said she supports this bill.

Robert Fisher, Oil & Gas company, said he supports this bill.

Patrick Montabon, Liquor Owners Association, said 98 different stores support this bill.

John Gregor, Crawford & Company, said this bill provides the definition and clarity that is needed for business.

Opponents' Testimony:

Al Smith, Montana Trial Lawyers Association, said that Work Comp is not, "No questions asked". He stated that it sounds good, but it is not how it is. He stated that this bill would relieve big out of state companies of their duty to be responsible and accountable. He further stated that exclusivity was not meant to

be an absolute shield against irresponsible actions by corporations. Prior to the Shermer case there were a handful of cases that were ever brought in Montana to go beyond the exclusivity clause and since Shermer there has not been an explosion of cases. If it was so easy, there would have been an explosion of suits in the past year. He said this bill would create an impenetrable wall, it would set a standard higher than what is required to prove murder. Being able to pierce that exclusivity law is a deterrent to employers to make them think twice before putting employees in harm's way. He said employers should be accountable and responsible for outrageous acts. What the Shermer court looked at was Shermer said he was injured by the companies intentional and malicious disregard for company and industry safety rules. The court said the employer can't hide behind the exclusivity rule if the employer has knowledge of facts or intentionally disregards facts that create a high probability of injury to workers and then deliberately continues to act with the high probability of injury, or deliberately proceeds to act with indifference to that high probability of injury to workers. The court did not say Shermer won his case, the court only said he had a chance to go in front of a jury to try and prove this high standard. It is not that easy to prove malice, in Montana over the past 10 years there have been 20 punitive damage cases in Montana and only 2 or 3 have settled for over \$750,000 and none above 2 million dollars. The concerns of employers are based upon fear, not the facts. He said this bill would let corporations off completely.

Pete Shermer, Representing himself, said he was exposed to hydrogen sulfide gas in his employment. He said he was involved in an industrial incident, not an accident. Conoco violated procedure after procedure, they were cited for 14 willful violations. He said that at the time of the incident they were under extreme pressure for more profits from the parent company DuPont and they put profit before safety. He stated that Shermer vs Conoco doesn't present any problem for responsible employers but it does hold employers accountable for intentional and malicious acts which cause injury to their employees.

Leroy Thom, Small Business Owner, Libby, said this bill would strip away any chance for compensation to him or his fellow workers at the WR Grace mine in Libby who have been affected by the disease. He stated that business owners should be held accountable for their own actions. He further stated that the system in place has worked for 30 years, the two real issues are accountability and responsibility.

Les Skramstad, Asbestos Victim, said he has asbestosis, he didn't get it from an accident he got it from working at the mine in Libby. He also said that he took the disease home to his wife

and children. The only bright spot in this whole deal was that he was able to go to the court house and present his case to a judge and jury.

Roger Sullivan, Attorney Kalispell, said the nature and extent of the disaster of WR Grace in Libby is unprecedented in Montana. He said there are fatal flaws in this bill which strip away the rights of the workers of Montana. What happened in Libby was no accident, it happened because knowledge of the lethal affects were not revealed to the workers of the mine. Approximately 640,000 Workers Comp claims have been filed in the past 20 years. Approximately 4 direct actions have been filed by workers in that time. There has not been a significant problem before Sherner and there has not been a lot since Sherner. In this bill "intentional injury" is defined in a way that for a practical matter there is no way an injured worker could meet that standard. This draft legislation says that the actual knowledge that an injury is certain to occur is the standard in this legislation and will never be met. He said in WR Grace it was employees at the highest level making decisions which injured workers. It is important to not take away the workers legal right when they have been intentionally injured by their employers. **EXHIBIT(bus36a08)**

Don Judge, AFL-CIO, said he opposes this bill.

Questions from Committee Members and Responses:

SENATOR ED BUTCHER said punitive damage by its definition is to punish.

Al Smith said the definition is to punish and deter.

SENATOR BUTCHER asked if any of the injured workers were being inadequately covered for their injury and disability needs through the existing Work Comp coverage.

Al Smith said that every worker in the State of Montana is inadequately cared for by the Workers Comp system.

SENATOR BUTCHER asked where the multi million dollar claims were being paid from.

Al Smith said he thinks it is paid by stockholders of the company.

SENATOR BUTCHER said that then the ones being punished are the stockholders who have no control over the operation.

Al Smith said the deterrent part needs to be remembered.

SENATOR BUTCHER asked if it would be more beneficial if criminal liability statutes were used against the managers or CEO's of companies.

Al Smith said being able to hold a corporations executives responsible would be a great adjunct.

SENATOR DON RYAN asked what striking the word omissions would do to the law.

Larry Jones said it carves out a whole area of possible injured workers claims. He said that you can't make a claim because of the failure to do something, as opposed to an affirmative act.

Al Smith said that by striking omissions it relieves corporations even more. He stated tht workers can be just as badly injured by something that the corporations fails to do.

SENATOR VICKI COCCHIARELLA asked about the concern of employers that they would be sued.

Riley Johnson said that the biggest thing is having to go to court and hire attorneys.

SENATOR COCCHIARELLA asked how the business got to know about the Sherner case.

Riley Johnson said it was from his office.

SENATOR DALE MAHLUM asked if WR Grace owned the mine early on.

Roger Sullivan said WR grace acquired the mine in 1963. He said that the complaints from his clients are from both before and after WR Grace bought the mine.

SENATOR COCCHIARELLA asked if an employee does something stupid at work would that claim get covered.

Larry Jones said it would be covered immediately.

SENATOR RYAN asked why the AFL-CIO opposes this bill.

Don Judge said that it is a matter of the workers being protected.

SENATOR RYAN asked if there should be a way for a worker to have recourse in the event of extreme irresponsibility as in the WR Grace situation.

SENATOR MCNUTT said if it is an intentional, deliberate act they are still protected under this bill.

CHAIRMAN TAYLOR asked why omissions was struck from the bill.

John Alke said if you are focused on the intent to harm someone, it is through a positive act. He said that leaving omissions in the law would be a breach to the exclusivity rule.

CHAIRMAN TAYLOR asked why corporations are exempt completely.

John Alke said the law says assault would be a breach of the exclusivity rule, and corporations can't assault.

CHAIRMAN TAYLOR asked what the cost to employers would be if this bill were not to pass.

Larry Jones said that on the Work Comp side there wouldn't be very much increase of costs.

Closing by Sponsor:

{Tape : 2; Side : B; Approx. Time Counter : 27.7}

WALTER MCNUTT, SD 50, SIDNEY, said there is good reason for employers to fear. He pointed out that the insurance companies said the premiums will go up. He stated that this bill does not address the issues at Libby. He further stated that the court said this is a new rule, and really it should be the legislature that enacts laws to make new rules. He said the employers are not the bad guys and that the way things are without this bill would make employers vulnerable to losing all they have worked for.

HEARING ON SB 421

Sponsor: **SENATOR FRED THOMAS, SD 31, STEVENSVILLE**

Proponents:

- Steve Turkiewicz, Montana Auto Dealers Association**
- Dick Olson, Montana Auto Dealers Association**
- Eric Anderson, Placer Motors**
- Tom Harrison, Montana Auto Dealers Association**
- Bill Lewis, Great Falls Tractor**
- Eric Torgerson, Implement Dealer**
- Chris Gallus, Montana Equipment Dealers**
- Charles Brooks, Montana Chamber of Commerce**

PRIOR TO 1915 MONTANA WORKERS' COMPENSATION ACT

Liability for Work Related Injury?

Employee Liability Theory - Negligence

Employer Defenses

1. Contributory Negligence
2. Assumption of Risk
3. Co-Employee Negligence

HISTORIC COMPROMISE (Quid Pro Quo)

Employee

1. No Negligence Lawsuit/
No Fault Recovery
2. No Complete Recovery/
Certain Recovery

Employer

- Gave Up Three Defenses
- Limited Damages
- Exclusive Remedy

The following exhibit
exceeds 10 pages.

Exhibit: 8

2.13.01

SB 223

The complete exhibit is located with the
minutes are at the
Montana Historical Society Archives
225 North Roberts
Helena, Mt 59620-1202
(406) 444-4775

DATE _____

2-1

[illegible]

DATE 2-13-2001SENATE COMMITTEE ON Business & LaborBILLS BEING HEARD TODAY: SB357 SB340SB421 , SB323**PLEASE PRINT**

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Steve Turbiewicz	442-1233	MT Auto Dealers Assn	SB323	✓	
Eric Torgerson	339-2222	MT Equipment Dealers	SB421		
Beth Lewis	453-1453	MT Impl Dealers	SB421		
Linda Reed	442-2543	Qwest	SB323	✓	
John Alice	442-3630	Montana Defense Trial Lawyers	SB323	✓	
Chris Gallus	439-4181	MT Equipment Dealers MT Retail Assn.	SB421 SB323	✓ ✓	
Tom Ebzery	441-7531	ExxonMobil	SB323	✓	
Angela Janalayo	442-4162	Montana Contractors Ass	SB323	✓	
Nancy Butler	444-7725	State Fund	SB323	✓	
Holly Franz	442-8560	ASMT	SB323	✓	
MARY CALLEN	443-7531	CENEX	SB323	✓	
Sam Burtin	442-6710	MMA	SB323		✓
GAIL ABERCROMBIE	442-7582	MT Petroleum Assn	SB323	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE

Feb 13, 2001

SENATE COMMITTEE ON

Business & Labor

BILLS BEING HEARD TODAY:

SB 357, SB 340,

SB 421, SB 323

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Don Judge	442-1708	MT AFL-CIO	SB323		X
Robbin Redman	295-7040	Asbestos Victims	SB323		X
George Wood	443-2200	MT Self Insurance Assoc	SB327	SB3	
Les Skramstad	293-6602	Asbestos Victims	SB323		X
Norita Skramstad	293-6602	" "	SB323		X
Gayla Benetich	293-5535	" "	SB323		X
LeRoy Thom	293-8733	ASBESTOS VICTIMS	SB323		X
AK SMITH		MTLHA	SB323		X
ROGER SULLIVAN	752-5566	LIBBY ASBESTOS VICTIMS	SB 323		X
ZANE SULLIVAN	721-9700	MONTANA ASSOC. OF REALTORS	SB 340	y	
Larry Jones	543-4933	C. Lerby Northwest	SB 323	X	
Al Smith	443-3124	MTLHA	SB 323		X
Larry Anderson	(406)727-8466		323		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE

Feb 13, 2001

SENATE COMMITTEE ON

Business & Labor

BILLS BEING HEARD TODAY:

SB 357, SB 340

SB 421, SB 323

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
PATRICK HOFFORN	752-7168	MLA MONTANA LEGISLATIVE	SB 323	X	
Verner Bertelson	442-3779	M S C A	357	X	
Dorothea Bertelson	442-3779	M S C A	357	X	
Charles Brooks	698-2380	Billings Chamber	SB 323	X	
John Mery	452-4710	Crowfoot & Co	SB 323	X	
Bob Worthington	443-0907	NIAID	SB 323	X	
RILEY JOHNSON	443-3797	NFIB	SB 323	X	
Derek Brown	443-3807	SELF	SB 323	X	
Tomboland	453-3369	SELF	323		X
Chuck Motzheim	933-5358	AARP	357	X	
Carl Schweitzer		Bozeman & Kalispell Chamber ASAM & APAC	323	X	
Clara Clifford	444-4613	State Auditor	357	X	
AL PONTRELLI	442-9535	MTAIFA	357	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-13-2001

SENATE COMMITTEE ON Business & Labor

BILLS BEING HEARD TODAY: SB 357, SB 340,

SB 421, SB 323

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
<i>Panda Carpenters</i>	590-5659	MT Housing Providers	SB 340	☒	
Pete Sherner	256-3955	Self	SB 323		X
Randy Bishop	245-7555	Self	SB 323		X
ROGER SULLIVAN	752-5544	LIBBY ASBESTOS VICTIMS	SB 323		X
RAYLA BENEFICK	293-5535	" "	SB 323		X
ROGER HALVER	459-7529	MT ASSO OF RENTORS	SB 340	X	
Larry Anderson	727-8466		SB 323		X
Leland Griffin	761-4100	Montana Refining Co.	SB 323	X	
WEBB BROWN	442-2405	MT CHAMBER	SB 323	X	
Dexter Bailey	761-4100	Mont. Ref. Co.	SB 323	X	
Kurt Blaz	442-7450	MT Bee-almi Industries	SB 323		
Nancy Schlegel	442-9476	MT Farm Bureau	SB 323	X	
Ray Bonnicorn	457-7210	MACO	SB 323	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-13-2001

SENATE COMMITTEE ON Business & Labor

BILLS BEING HEARD TODAY: _____

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	UP/VICE
BARRY SLOAN	442-6600	MT Motor Carriers	SB 323	X	
STEVE TURKIEWICZ	442-1233	MT Auto Dealers	SB 323	X	
ERICK ANDERSEN	442-2603	Placer Motor Inc.	SB 323	X	
ROBERT K. OLSON	727-2552	MT Auto Dealers + Bison Motor Co.	SB 323	X	
ERIC JOHNSON	339-2222	Global Johnson Inc.	SB 421	X	
Brian Johnson	339-2222	Global Johnson Inc.	SB 421	X	
BILL LEWIS	453-1453	MT Equip. & LR Assoc.	SB 421	X	
Tom Harrison	457-0159	MT Dealers Assoc.	SB 421	X	
Brenda Nordlund	444-2713	MT DOT	SB 323		INFO

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR**

Call to Order: By **CHAIRMAN MIKE TAYLOR**, on February 14, 2001 at 8:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Taylor, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Edward Butcher (R)
Sen. Vicki Cocchiarella (D)
Sen. Sam Kitzenberg (R)
Sen. Dale Mahlum (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 445, 2/13/2001
Executive Action: SB 48; SB 277; SB 151; SB118;
SB 292; SB 340; SB 323

Motion/Vote: SEN. ROUSH moved that SB 118 DO PASS AS AMENDED.

Motion failed 5-4 with Cocchiarella, Kitzenberg, Mahlum, Roush, and Ryan voting aye.

Motion/Vote: SEN. TAYLOR moved that SB 118 BE TABLED. Motion carried 5-4 with Cocchiarella, Kitzenberg, Roush, and Ryan voting no.

EXECUTIVE ACTION ON SB 292

Motion/Vote: SEN. SPRAGUE moved that AMENDMENTS TO SB 292 BE ADOPTED. Motion carried unanimously.

Motion/Vote: SEN. SPRAGUE moved that SB 292 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON SB 340

Motion: SEN. TAYLOR moved that AMENDMENTS TO SB 340 BE ADOPTED.

SENATOR SPRAGUE pointed out that the amendments speak to the roto roter guy, he can still do what he does if he doesn't advertise himself as a plumber.

Vote: Motion carried unanimously.

Motion/Vote: SEN. TAYLOR moved that SB 340 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON SB 323

Motion/Vote: SEN. TAYLOR moved that SB 323 DO PASS. Motion carried 8-1 with Vicki Cocchiarella voting no.

ADJOURNMENT

DATE 2-14-2001

28

**MONTANA SENATE
2001 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL VOTE**

DATE 2-14-2001 BILL NO. SB 323 NUMBER 13

MOTION:

Ben Taylor Moxes Do Pass

[illegible]

INDEX TO BILLS IN COMMITTEE

September 10, 2001

- Committee: (H) Business and Labor -

01:34 PM

- SB 313** **SPONSOR:** Thomas, Fred **SHORT TITLE:** Technology acquisition and depreciation fund for schools
 REFERRED ON: 03/15/2001 **HEARD ON:** 03/19/2001
 EXECUTIVE ACTION: 03/19/2001 - Bill Concurred -- **VOTE:** 18 - 1
 FINAL DISPOSITION: 04/30/2001 Chapter Number Assigned
-
- SB 314** **SPONSOR:** Doherty, Steve **SHORT TITLE:** Regulate and certify entities that euthanize animals
 REFERRED ON: 03/03/2001 **HEARD ON:** 03/14/2001
 EXECUTIVE ACTION: 03/21/2001 - Bill Concurred as Amended -- **VOTE:** 14 - 5
 FINAL DISPOSITION: 04/26/2001 (H) Died in Process
-
- SB 322** **SPONSOR:** Shea, Debbie **SHORT TITLE:** Natural resource worker education and retraining
 REFERRED ON: 03/26/2001 **HEARD ON:** 03/28/2001
 EXECUTIVE ACTION: 03/28/2001 - Bill Concurred as Amended -- **VOTE:** 17 - 2
 FINAL DISPOSITION: 05/05/2001 Chapter Number Assigned
-
- SB 323** **SPONSOR:** McNutt, Walter **SHORT TITLE:** Revise exclusive remedy for worker's compensation
 REFERRED ON: 03/03/2001 **HEARD ON:** 03/14/2001
 EXECUTIVE ACTION: 03/19/2001 - Bill Concurred -- **VOTE:** 12 - 7
 FINAL DISPOSITION: 04/12/2001 Chapter Number Assigned
-
- SB 327** **SPONSOR:** Doherty, Steve **SHORT TITLE:** Restrict government competition with private internet service providers
 REFERRED ON: 03/15/2001 **HEARD ON:** 03/20/2001
 EXECUTIVE ACTION: 03/27/2001 - Bill Concurred as Amended -- **VOTE:** 19 - 0
 FINAL DISPOSITION: 05/01/2001 Chapter Number Assigned
-
- SB 330** **SPONSOR:** Mahlum, Dale **SHORT TITLE:** Revise laws on pyramid promotional schemes
 BY REQUEST OF: State Auditor
 REFERRED ON: 03/01/2001 **HEARD ON:** 03/07/2001
 EXECUTIVE ACTION: 03/19/2001 - Bill Concurred as Amended -- **VOTE:** 16 - 3
 FINAL DISPOSITION: 04/21/2001 Chapter Number Assigned
-
- SB 339** **SPONSOR:** Berry, Dale **SHORT TITLE:** Revise funding of public assistance, foster care, and protective services
 REFERRED ON: 03/26/2001 **HEARD ON:** 03/28/2001
 EXECUTIVE ACTION: 03/28/2001 - Bill Concurred as Amended -- **VOTE:** 19 - 0
 FINAL DISPOSITION: 05/03/2001 Chapter Number Assigned
-

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MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR**

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on March 14, 2001 at
8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. Brett Tramelli (D)
Rep. James Whitaker (R)

Members Excused: Rep. Nancy Fritz (D)
Rep. Carol C. Juneau (D)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB314, SB323, SB428, 3/9/2001
Executive Action: None

{Tape : 2; Side : B; Approx. Time Counter : 7}

Questions from Committee Members and Responses:

REP. PRICE asked SEN. HARRINGTON about the fiscal note. He replied it had been cut in half. He said it would be no problem even if it had gone up to 6%, because there was \$271 million in the fund.

REP. WHITAKER asked Ms. Minnow if there had been an enrollment drop in the schools. She replied yes the student population had decreased by 6700 in the last 6 years.

REP. BROWN said to Mr. Braun he understood SEN. HARRINGTON to say there was \$271 million in the trust fund, and REP. BROWN thought the figure was \$171 million. Mr. Braun said the fund had \$172 million in December and \$165 million in January. He explained the fund fluctuates and is lowered in the fourth quarter when there is a high rate of unemployment. If the fund drops to a certain point by October, the rates for Schedule 2 are triggered and the higher rates go into effect on January 1.

Closing by Sponsor:

SEN. HARRINGTON apologized for the incorrect figure of \$271 million, but he noted that the fund does change. He told the committee that even though this was a slight increase, it would send out a good signal to the workers. He said no increase would be a bad signal. He said if it passed out of committee he hoped REP. GALVIN-HALCRO would carry it in the House.

{Tape : 2; Side : B; Approx. Time Counter : 20.1}

HEARING ON SB323

Sponsor: SEN. WALTER MCNUTT, SD50, SIDNEY

Proponents: John Alke, Montana Defense Trial Lawyers
Web Brown, Montana Chamber of Commerce
Larry Jones, Liberty NW
Riley Johnson, NFIB
Derek Brown, Montana Building Industry &
Brown Construction
Tom Bradford, Montana Roofing Contractors
Bradford Roofing
Dexter Thiel, Thiel Bros. Roofing
Montana Roofing Contractors

Montana Roofing Contractors

Kathy Griffith, ASME , Butte
Leland Griffin, Montana Refinery, Great Falls
Linda Reed, Quest
James Mockler, Coal Council
Patrick Montalban, NO. Montana Oil & Gas Assn.
Jacqueline Lenmark, AIA
John Metropolous, NAIL
Gail Abercrombie, Montana Petroleum Assn.
Charles Brooks, Billings Chamber of Commerce
Brad Griffin, Montana Retail Merchants Assn.
Steve Turkowicz, Montana Auto Dealers Assn.
Patrick Heffernan, Montana Logging Assn.
Cary Hegrebert, Montana Wood Products Assn.
Nancy Schlepp, Montana Farm Bureau
Nancy Butler, State Fund
Ray Barnicot, Montana Assn. of Counties
Mary Ellen, Cenex
Christy Blazer, Montana Assn. of Beer and Wine
Wholesalers
Spook Stang, Montana Motor Carriers
George Wood, Montana Self-Insurers Assn.
Aidan Myhre, D.A.Davidson

Opponents: Eric Thusen, attorney, Helena
Don Judge, MT AFL-CIO
Ed Logan, self
Al Smith, Montana Trial Lawyers

Opening Statement by Sponsor:

SEN. WALTER MCNUTT, SD50, SIDNEY, said "the bill amends the exclusive remedy provision in the WCA to provide an injured employee with a cause of action for damages against an employee or fellow employee who causes intentional injury." **SEN. MCNUTT** said this bill is not about workmen's compensation benefits. He said it is about when a worker can sue another employee and still have workmen's compensation benefits. He said the bill was being brought because of a recent Supreme Court decision which said unless the acts are intentional they are not subject to litigation. In the 2000 decision, the Supreme Court revisited the standard used for determining whether an employer's act or omission was protected under the exclusive remedy. The Court held that it would be actual malice if an employer has knowledge of facts or intentionally disregards facts that create a high probability of injury or acts with intentional disregard.

{Tape : 3; Side : A; Approx. Time Counter : 0}

CHAIRMAN MCKENNEY said he would allow thirty minutes for proponents and opponents each to speak, and after that time period was up they were to line up and merely state their name.

Proponents' Testimony:

Mr. Alke said workmen's compensation was a no-fault remedy, with an exclusive remedy rule. He noted the key word in the bill is "intentional injury." The Court reversed 30 years of case law, he said in the Sherner decision. He said the determination of "intentional and act of malice" is in the eyes of the beholder. He said this has made a gigantic difference in the law, and will have to be determined by a jury, case by case, if this bill is not passed. He said the effect of Sherner is that every workplace accident could result in punitive damages to the employer. He said employers are exposed by this case to a new liability which they cannot even insure. He noted the bill will not affect Sherner or the Libby Vermiculite miners, and will only apply after the effective date.

Mr. Brown said this is a workmen's compensation balance issue. He said it is the desire of employers to have safe places for their employees to work. He stated the employee should be able to sue if there is the intent to harm, and this is still in the bill.

Mr. Jones said the bill will restore fairness and compromise. He presented written testimony. **EXHIBIT (buh58a03)**

Mr. Johnson said if there was only one bill he could testify on this session this would be the one. When surveyed his members had been asked what were they most afraid of, and the #1 answer was the "fear of being sued." He said most of his members do not have \$20,000 to spend to prove they are right.

Mr. Brown said his company provides day care, health, dental and vision insurance, and has an active safety program. Their policy, he said, is that no job is worth being injured for. He noted that good employees are difficult to find and hard to train, and his company does not want to lose them. "The only protection we have is exclusive remedy," he said, "don't take that away."

Mr. Bradford said his company was founded by his grandfather and has 25 employees. He said safety is a major concern, but accidents do happen. "Without SB323, we are wide open," he said, "the litigious climate in the country is scary." He also noted this was an uninsurable risk and without SB323 he would have to close his business and move to another state. He asked them to pass this bill for "old businesses and new businesses."

Mr. Thiel said he was highly offended to have it intimated that he did not care about his employees. He said, "I attend the same church, know their families, and work on safety issues all the time." He said he had been in business for 45 years and he could not continue with this kind of risk. Insurance companies have told him they have no coverage for this risk.

Ms. Reed said this bill will help overcome the unpredictability of business. She said it will encourage business to stay here and do business.

Mr. Griffin said it was imperative for businesses like his to have an exclusive remedy.

Mr. Mockler presented written testimony. **EXHIBIT(buh58a04)**

Mr. Montalban said he represented 70 small businesses, noting that large businesses could litigate these issues for eternity. He said that the oil and gas business is dangerous. "I have lost a finger on a drilling rig and I was there when a young man died on one," he said. He said, "We have to stick with exclusive remedy, otherwise the only ones who win are the trial lawyers," he said.

Ms. Lenmark said the Shermer decision captured national attention and was not just a Montana issue. She said insurance companies in all 50 states worry about this because insurance is not available for intentional acts. She said this disrupts the normal administration of workmen's compensation laws.

Ms. Abercrombie said Montana needs to keep the exclusive remedy provision.

Mr. Brooks urged support and presented written testimony. **EXHIBIT(buh58a05)**

Also appearing in support of SB323 were **Brad Griffin, Steve Turkowicz, Patrick Heffernan, Cary Hegrebert, Nancy Schlepp, Nancy Butler, Ray Barnicot, Mary Ellen, Christi Blazer, Spook Stang, George Wood, and Aidan Myhre.**

{Tape : 3; Side : B; Approx. Time Counter : 4}

Opponents' Testimony:

Mr. Thusen agreed with the proponents when they said responsible business people need protection so they can act without fear. However, he said, irresponsible people have to be told what to do. He said they are like "weeds and flowers." He told about a

case which he handled. The worker called his wife the night before and said that he didn't want to do what he was going to be asked to do the next day and he feared he would die doing it, but he had to feed his family. He knew he would be asked to go into a dirt trench with walls which had not been properly shored or sloped on a site which had received numerous OSHA violations and a series of fines "as long as your arm." On the next day he entered the trench, the dirt caved in on him and he was buried alive. His wife asked a lawyer to take the case and he wouldn't because he said the employer had to have "intent" to have killed her husband. This was before the Sherner decision, he said, and if this bill passed the law would return to that. He said in an effort to get a good contract, bids are lowered, corners are cut, and a good contract turns into a bad one. He said all businesses which are responsible will have proper scaffolding, trench walls and caution with toxic chemicals. However, he said there are businesses which have a "callous disregard for human life." He said the charge of the legislature is that they "shall" protect workers, not "may." He presented written testimony and two photographs. **EXHIBIT (buh58a06) EXHIBIT (buh58a07) EXHIBIT (buh58a08)**

Mr. Judge said this bill would be redefine to "unless an intentional or deliberate" act in order to sue and this would be an impossible standard to meet, even for murder committed during a bank robbery. He said the Montana Safety Culture Act was a joke.

Mr. Logan said Sherner was a friend of his who was earning \$40-50,000 at Conoco when he was disabled. He was offered \$500 per month and a person could not live on that.

{Tape : 4; Side : A; Approx. Time Counter : 0}

Mr. Smith said Mr. Sherner couldn't be there today because he was taking medical tests that the defendants had requested. He explained that Sherner had lost motor and speech skills. He said he wished the committee could see him. He presented copies of the Montana Code, a quote from the Sherner case and an excerpt from SB323. **EXHIBIT (buh58a09)** He presented testimony from a lawyer in the W.R. Grace case. **EXHIBIT (buh58a10)** He said the Sherner case has been passed for over a year and asked where is the deluge of lawsuits which everyone has predicted. He said lawyers will not risk a case of they know they cannot win. He told the committee they will wonder why they ever voted yes on this bill.

Questions from Committee Members and Responses:

CHAIRMAN MCKENNEY advised the committee to stay on the subject of this bill and not to drift off.

REP. LAIBLE asked **Mr. Alke** how he would respond to the charge this bill would affect the W.R. Grace case. **Mr. Alke** said to the committee what they were told was not true. He stated this bill only applies to injuries received after passage. He said the Lockwood decision is specific with W.R. Grace, and this bill has nothing to do with the Montana Occupational Disability Act.

{Tape : 4; Side : A; Approx. Time Counter : 13}

REP. WHITAKER asked **Mr. Brown** if the trench had nine violations why it hadn't been shut down. **Mr. Brown** said he was surprised to hear those figures since OSHA has a tremendous power. He said he was surprised the fines were so low, and that they should have started at \$2500 and double every time thereafter.

REP. MUSGROVE asked **Mr. Judge** what he thought about the proponents' statement this will bring back a balance of fairness and compromise. **Mr. Judge** said that in terms of this bill there was no balance. He said they were referring to a combination of workmen's compensation benefits and they could spend hours discussing these benefits or the lack thereof.

REP. MUSGROVE asked **Mr. Smith** if amendments would make this a better bill. **Mr. Smith** replied they should "just kill the bill."

REP. MUSGROVE said he saw a lot of proponents for the employers and only a few workers, and asked where were they. **Mr. Smith** said, "Most employees don't know when they are going to be hurt."

REP. BROWN said to **Mr. Alke** there are 10 sides to every story, and asked him if he was familiar with **Mr. Thusen**. **Mr. Alke** said this was a good example of how trial lawyers work. He explained that **Mr. Thusen** sued the project owner and the engineer and received a \$1.5-2 million settlement.

REP. GALLIK said **Mr. Alke** testified that malice was in the eyes of the beholder, what did the code say. **Mr. Alke** said in a jury trial, the lawyer instructs the jury so they could get an instruction of malice. In the jury room they do what they want, he said. The Sherner case says an action can be maintained merely by alleging an intentional act.

REP. BITNEY asked **Mr. Alke** about the backhoe case. **Mr. Alke** said the fact that bad things were done there is not a justification for exposing every business in Montana to civil suit. **REP. BITNEY** agreed that life itself could be dangerous.

Closing by Sponsor:

HOUSE COMMITTEE ON BUSINESS AND LABOR

March 14, 2001

PAGE 13 of 14

SEN. MCNUTT closed by saying when he started his presentation he had begun by saying this was not about workmen's compensation. This bill puts the law back the way it was prior to the Sherner decision, he said. He pointed out there are 13-20 cases pending now, even though there was testimony there were none. He also said there are a lot of cases settled out of court and there is no way to track those. "The most valued thing our employers have are employees," he said, "and we don't want them injured." He said he provided safety glasses and safety shoes for his workers. He added that when he saw a worker with his safety glasses in his toolbox instead of on his face, he was not very polite about it.

PRIOR TO 1915 MONTANA WORKERS' COMPENSATION ACT

Liability for Work Related Injury?

Employee Liability Theory - Negligence

Employer Defenses

1. Contributory Negligence
2. Assumption of Risk
3. Co-Employee Negligence

HISTORIC COMPROMISE

(Quid Pro Quo)

Employee

1. No Negligence Lawsuit/
No Fault Recovery
2. No Complete Recovery/
Certain Recovery

Employer

- Gave Up Three Defenses
- Limited Damages
- Exclusive Remedy

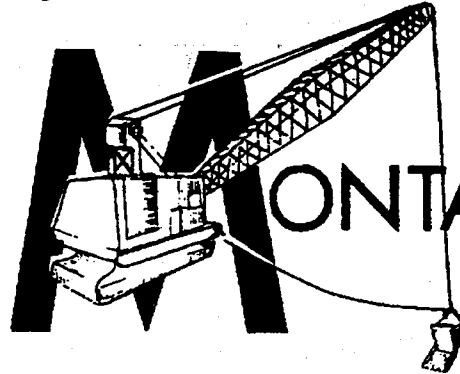


EXHIBIT 4
DATE 3-14-01
SB 323

4

MONTANA COAL COUNCIL

2301 COLONIAL DRIVE • HELENA, MONTANA 59601
(406) 442-6223 FAX: (406) 449-6628 EMAIL: MTCOAL@AOL.COM

Testimony of James D. Mockler

SB 323

Members of the House Business and Labor Committee, I am James D. Mockler, Executive Director of the Montana Coal Council. I appear here today in support of SB 323.

This legislation is absolutely necessary to rectify the substantial change in employer liability imposed by Sherner v. Conoco, Inc., 2000 MT 50, 995 P.2d (2000). As you know, Sherner radically altered the balance underlying the workers' compensation law and established a new standard which allows an employee to collect workers' compensation benefits and then sue his employer in tort. Previously, an employee could sue his co-employee for injuries damages if he received a work-related injury caused by his co-employee's intentional and "malicious" conduct. Sherner imposed liability directly on the employer and, because of the way in which "intentional" and "malicious" have been interpreted, Montana employers are now defending lawsuits virtually every time an employee suffers a significant workplace injury.

The court has said that the employer does not have to intend harm to the employee specifically but only intend the action that results in harm. An even greater burden is imposed by the court's adoption of the same definition for "malice" which is found in Montana's punitive damages statutes. This definition can force an employer to defend a tort suit based, not upon an intent to injure the employee, but upon an allegation that the employer disregarded the probability

that an employee would be injured.

Furthermore, if the same definition is used to impose liability and to establish a right to punitive damages, employers face the possibility of huge verdicts based, not upon an actual intent to injure the employee, but upon the mere determination that an employee could possibly be injured in the workplace.

Montana employers now must pay twice: once for workers' compensation insurance coverage, and again to defend lawsuits brought by injured employees. This is an intolerable burden and flies in the face of the basic quid pro quo premise underlying workers' compensation. That premise required an employer to give up its right to certain defenses in order to guarantee injured employees the right to prompt medical benefits and wage replacement. In exchange, the employer was granted immunity from suits. SB323 restores the balance intended by the law, yet properly preserves an employee's right to compensation for truly intentional harm at the employee by his or her employer.

We urge you to return to the long-held principles of workers' compensation and vote "yes" on SB 323.

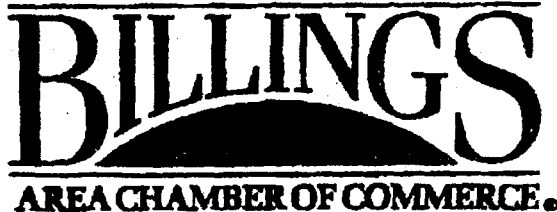


EXHIBIT 5
DATE 3-14-01
SB 323

SB 323: Revise Exclusive Remedy for Workers' Compensation

Issue

Should the Chamber support or oppose Senator McNutt's bill to revise exclusive remedy for workers' compensation?

Importance to the Chamber

SB 323, by Senator McNutt is "an act amending the exclusive remedy provision in the workers' compensation act to provide an injured employee with a cause of action for damages against an employer or a fellow employee who causes intentional injury; defining "intentional injury"; amending Section 39-71-413, MCA; and providing an immediate effective date and an applicability date."

The Pros and Cons of this bill?

The Pros

Businesses and groups representing them, such as the Montana Chamber of Commerce, have identified this bill as their major priority of this session. SB 323 attempts to address the "exclusive remedy" subjectivity issue that was created as a result of a Montana Supreme Court decision.

Through its ruling in *Sherner v. Conoco*, the Montana Supreme Court created the potential for an injured employee to directly sue the assets of their employer, if they can prove that the employer willfully and knowingly put them into a hazardous situation. The provision as it existed prior to the ruling was an agreement whereby an employee and an employer agreed that an employee could not directly sue the company's assets if they were injured on the job.

Proponents support this bill because it attempts to restore the exclusive remedy provision to the way it existed prior to the ruling by clearly defining what an employer is liable for and also that for which an employee may seek damages.

The Cons

Opponents, such as labor groups that represent employees, maintain that an employer should be liable for placing an employee into a potentially hazardous situation and that the employee should collect for resulting damages.

Opponents argue that a hazardous situation can mean many different things and that this interpretation should be broad in order to address different situations that may apply.

Conclusion

The committee has reviewed this bill and compared it to the Philosophy Papers, weighed the pros and cons, consulted with Charles Brooks and compared it to past positions of the Chamber. After considering all of these factors, the Legislative Affairs Committee opted to support SB 323. The rationale for this conclusion is found under the workers' compensation statement in the Philosophy Papers that reads:

We support the exclusive remedy doctrine for workplace injuries with the inherent trade off of legislated benefits for the injured worker without having to prove negligence.

SB 323 – Senator Walt McNutt – Revise exclusive remedy for workers' compensation

In February 2000, the Montana Supreme Court in Sherner v. Conoco changed the ruling of exclusive remedy for workers' compensation.

SB323 restores the exclusive remedy protection to employers under the Workers' Compensation Act eroded by Sherner v. Conoco, which held that an injured worker could avert the exclusive remedy protection and sue the employer directly. SB323 does nothing more than return both the employee and the employer to the position they had prior to the Shermer decision.

The exclusive remedy protection is NOT an absolute shield for employers. Under SB323, the employee may still sue an employer who intentionally and deliberately injures an employee.

The workers' compensation system is based upon an historical foundation that protects both the employee and the employer.

- Without having to prove fault, employees receive lost wages, and medical and related benefits.
- Employers receive protection from employees' lawsuits for work related injuries. The employees' remedy for a work related injury is the workers' compensation benefits.

The purpose of SB323 is to fix the system destabilized by Sherner v. Conoco. SB323 restores the balance and protections that have existed in Montana's workers' compensation system since 1915. SB323 ensures a more stable and predictable infrastructure for businesses in Montana.

There are approximately 13 cases of injured workers' trying to sue their employers under this precedent setting case. Failure to pass SB323 will increase litigation.

There is no insurance for "intentional" acts. Under SB323 employees have a course of action against their employer for "intentional and deliberate" acts. Under SB323 employers have a clear understanding of what is not covered by insurance and protected under the exclusive remedy provision in the Workers' Compensation Act.

The standard that exists in order for an employee to circumvent the exclusive remedy and sue their employer exists because of the historical arrangement addressed above. SB323 maintains the protections and reliability that employers and employees have come to expect and deserve.

Further implications of the Sherner v. Conoco decision are that employers are saddled with an uninsurable risk and are extremely vulnerable.

SB323 is not about a serious injury or an individual. SB323 is about the workers' compensation system in Montana and restoring the system to its' original intent and purpose. Please pass SB323.

*Charles Brooks
Belling RR Co Chamber of Commerce
Belling, MT*

SB 323

EXHIBIT 6
DATE 3-14-01
SB 323

6

INSPECTION HISTORY
WHERE CITATIONS WERE ISSUED AND AFFIRMED

Inspection Date	Issuance Date	F.O. Date	Cited For	Contested	Disposition
12/20/77	12/22/77	1/18/78	Serious 29 CFR 1926.652(b) Trench walls not properly sloped or shored	Yes	Affirmed. Penalty reduced from \$320 to \$150 by Formal Settlement Agreement.
8/29/78	9/1/78	8/8/79	Serious 29 CFR 1926.652(l)(1) Spoils pile on edge of trench 29 CFR 1926.652(b) Trench walls not properly sloped or shored	Yes	Affirmed. Penalty reduced from \$360 to \$125 by Formal Settlement Agreement.
5/31/83	6/13/83	7/5/83	Serious 29 CFR 1926.652(b) Trench walls not properly sloped or shored	No	Affirmed. Penalty reduced from \$420 to \$100 by Informal Settlement Agreement.
7/12/85	7/16/85	10/23/85	Repeated 29 CFR 1926.652(c) Trench walls not properly sloped or shored	Yes	Affirmed as a Serious citation. Penalty reduced from \$1280 to \$300 by Formal Settlement Agreement.
10/7/86	10/14/86	10/28/87	Repeated 29 CFR 1926.652(b) 29 CFR 1926.652(c) Trench walls not properly sloped or shored	Yes	Affirmed. No change in penalty (\$2240) by Formal Settlement Agreement.
10/14/86	10/23/86	10/28/87	Willful 29 CFR 1926.652(b) Trench walls not properly sloped or shored	Yes	Affirmed. Penalty reduced from \$8000 to \$5300 by Formal Settlement Agreement.
1/23/90	2/22/90	3/16/90	Serious 29 CFR 1926.652(b) Trench walls not properly sloped or shored	No	Affirmed. Penalty reduced from \$910 to \$600 by Informal Settlement Agreement
4/13/90	4/30/90	5/22/90	Repeat 29 CFR 1926.652(a) Trench walls not properly sloped or shored	No	Affirmed. Penalty reduced from \$980 to \$500 by Informal Settlement Agreement.
(In WYOMING) 12/9/93	12/21/93	1/17/94	Serious Chap. XVI, Sec.2.(c)(11) Chap. XVI, Sec.2.(j)(11) Chap. XVI, Sec.2.(k)(1) Chap. XVI, Sec.3.(a)(1) No safe access to trench Spoils pile on edge of trench No inspection by competent person Trench walls not properly sloped or shored	No	Affirmed. Penalty reduced from \$6362 to \$2625 by Informal Settlement Agreement.

**The following exhibit is photographs in a
large album or mounted photographs that
can not be scanned.**

Exhibit: 7

Date: 3.14.01

SB 323

**The complete exhibit is located
with the minutes are at the
Montana Historical Society Archives
225 North Roberts
Helena, MT 59620-1202
(406) 444-4775**

**The following exhibit is photographs in a
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can not be scanned.**

Exhibit 8

Date: 3.14.01

SB 323

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Montana Historical Society Archives
225 North Roberts
Helena, MT 59620-1202
(406) 444-4775**

Montana Criminal Code

Section 45-2-101.

(34) "Knowingly"—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense **when the person is aware of the person's own conduct or that the circumstance exists.** A person acts knowingly with respect to the result of conduct described by a statute defining an offense **when the person is aware that it is highly probable that the result will be caused by the person's conduct.** When knowledge of the existence of a particular fact is an element of an offense, **knowledge is established if a person is aware of a high probability of its existence.** Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(64) "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's **conscious object to engage in that conduct** or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

(42) "Negligently"—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the **person consciously disregards a risk that the result will occur or that the circumstance exists** or when the person **disregards a risk of which the person should be aware that the result will occur or that the circumstance exists.** The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a **reasonable person would observe in the actor's situation.** "Gross deviation" means a deviation that is **considerably greater than lack of ordinary care.** Relevant terms, such as "negligent" and "with negligence", have the same meaning.

45-5-102. Deliberate homicide. (1) A person commits the offense of deliberate homicide if:
(a) the person purposely or knowingly causes the death of another human being; or

45-5-104. Negligent homicide. (1) A person commits the offense of negligent homicide if the person negligently causes the death of another human being.

(2) Negligent homicide is not an included offense of deliberate homicide as defined in 45-5-102(1)(b).
(3) A person convicted of negligent homicide shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed \$50,000, or both.

Sherner held:

¶37. We conclude that the appropriate definition of "malice" for use in § 39-71-413, MCA, is that found in § 27-1-221(2), MCA; [a] defendant is guilty of actual malice if the defendant has **knowledge of facts or intentionally disregards facts that create a high probability of injury to the plaintiff and: (a) deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to the plaintiff; or (b) deliberately proceeds to act with indifference to the high probability of injury to the plaintiff.**

SB 323 eliminates the above malice standard. If SB 323 passes it will be easier to convict a murderer in Montana than it will be to hold employers accountable and responsible for the injuries and deaths they cause.

The following exhibit is more than the 10
(ten) page scan limit.

Exhibit - 10

3.14.01

SB 323

The complete exhibit is located with the
minutes are at the
Montana Historical Society Archives
225 North Roberts
Helena, MT 59620-1202
[406] 444-4775

HOUSE OF REPRESENTATIVES
ROLL CALL

HOUSE BUSINESS AND LABOR COMMITTEE

DATE MARCH 14, 2001

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
Rep. Joe McKenney	✓		
Rep. Gary Matthews	✓		
Rep. Roy Brown	✓		
Rep. Kathleen Galvin-Halcro	✓		
Rep. Carol Juneau			✓
Rep. Rick Laible	✓		
Rep. John Musgrove	✓		
Rep. Nancy Rice-Fritz			✓
Rep. Don Steinbeisser	✓		
Rep. Jim Whitaker	✓		
Rep. Rod Bitney	✓		
Rep. Sylvia Bookout-Reinicke	✓		
Rep. Dave Gallik	✓		
Rep. Dennis Himmelberger	✓		
Rep. Jim Keanie	✓		
Rep. Bob Lawson	✓		
Rep. Bill Price	✓		
Rep. Brett Tramelli	✓		
Rep. Allen Rome	✓		

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business and Labor Committee

DATE March 14, 2001

BILL NO. SB 323

SPONSOR(S) Sen McNutt

"revised exclusive remedy for worker's compensation"

TYPE

PROPONENT (P)

OPPONENT (O)

INFORMATIONAL (I)

PLEASE PRINT

PLEASE
CIRCLE

NAME

ADDRESS

REPRESENTING

POI	George Wood	MSIA	MT. Self-Taxing Assoc.
POI	Larry Jones	700 South 1st St. Missoula	Liberly Northwest
POI	Leland Griffin	Great Falls	MONTANA RACING C
POI	WEBB BROWN	HELENA	MT CHAMBER
POI	Jani McCall	Butte	Deac. Bldg Chin
POI	Andy Huffer	Butte	ASMT
POI	Ray Barmine	MACo	2711 Skyway Dr.
POI	Linda Reed	Great Helena	Quent
POI	Riley Johnson	Helena	NFIB
POI	Nancy Schlegel		MT Farm American
POI	Jim Mockler	Helena	MT Coal Council
POI	DEREK BROWN	HELENA	SELF
POI	Rick G Scherr	Great Falls	OPPOSE
POI	Rick Halm		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

(P)

Carl Schweitzer

Helena

Bozeman & Kell
Chambers

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MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business and Labor Committee

DATE _____

BILL NO. SB 323

SPONSOR(S) _____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE
CIRCLE

	NAME	ADDRESS	REPRESENTING
(P)OI	Joe MAUREK	Helena	DAD Co
(P)OI	Brad Giffen	Helena	MT Retail Assoc.
(P)OI	Bob Gilbert	Helena - Sdy	MT Tow Truck Assoc.
(P)OI	Tom BRADFORD	BLGS	MT. Reg. Assoc.
(P)OI	Charles Brooks	Billings	Billings Chamber of Commerce
(P)OI	Byron Roberts	Helena	MT Building Ind. Assoc.
(P)OI	Steve Turkiewicz	Helena	MT Auto Dealers Assn
(P)OI	ED LOGAN	BILLINGS	SELF
(P)OI	Kristi Blazyn	Helena	MT Beekeeping Association
(P)OI	Dexter Thiel	Sidway	Montana Roofers Assoc
(P)OI	PATRICK HOFFMAN	KATISPOCK	MT. COGGING ASSOC.
(P)OI	John Allen	Helena	MT Defense Tool Lenny
(P)OI	Rich Twiss	Helena	Self
(P)OI	Al Smith	Helena	MTLHA

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business and Labor Committee

BILL NO. ^{SB} 323

DATE MARCH 14, 2001

SPONSOR(S) McPherson

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE
CIRCLE

	NAME	ADDRESS	REPRESENTING
☒ POI	GAIL ABERCROMBIE	Helena	MT Petroleum Assn
☒ POI	Cary Hegreberg	"	Wood Products
☒ POI	Nancy Butler	Helena	State Fiscal
☒ POI	Tom Ebbert	Billings	MT Contractors Assn
☒ POI	MARY ALLEN	Helena	CENFLY
☒ POI	Patrick M. Montalban	Cat Bend	Northern mt. Oil & Gas Ass.
☒ POI	Patrick M. Montalban	Cat Bend	Lignite Stone Owners Ass
☒ POI	Jaqueline Henmark	Helena	Am. Ins Assn
☒ POI	Jon Metropoulos	"	NAII
☐ POI			
☐ POI			
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☐ POI			
☐ POI			

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on March 19, 2001 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. James Whitaker (R)

Members Excused: Rep. Rod Bitney, Vice Chairman (R)
Rep. Kathleen Galvin-Halcro (D)
Rep. Brett Tramelli (D)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB242, SB373, SB450, SB313,
3/15/2001
Executive Action: SB145, SB151, SB323, SB450,
SB313, SB330, SB428

REP. PRICE will carry the bill in the House.

EXECUTIVE ACTION ON SB313

Motion: REP. BOOKOUT-REINICKE moved that SB313 BE CONCURRED IN.

Discussion:

REP. WHITAKER said he was concerned about the long-range impact and asked if they needed another fiscal note.

CHAIRMAN MCKENNEY replied it was more a local property tax issue, not the General Fund.

Vote: Motion carried unanimously.

REP. LAIBLE will carry the bill in the House.

EXECUTIVE ACTION ON SB323

Motion: REP. LAIBLE moved that SB323 BE CONCURRED IN.

Discussion:

REP. LAIBLE said he supported the bill.

REP. GALLIK said he opposed the bill because its intentions were alright but it took them too far, especially by removing the omissions part. He said he believed the bill was unconstitutional.

REP. BROWN said he had asked Mr. Braun to provide the wording in other states, and he asked Mr. Higgins to explain it.

Mr. Higgins said Mr. Braun had provided the wording of a dozen other states regarding the section with the exclusive remedy provision. He said he had conferred with other legislative staffers and they agreed SB323 does not take Montana outside of the exclusive remedy provision.

{Tape : 3; Side : B; Approx. Time Counter : 0}

REP. PRICE asked about vicarious liability.

Mr. Higgins replied there was no specific reference in other states.

REP. PRICE said that would not stop him from supporting the bill.

REP. MUSGROVE said he was concerned the bill went beyond "quid pro quo." He said this is a "take it or leave it" bill and it is not good for workers.

REP. PRICE said many people are frustrated with rates but that has nothing to do with this bill.

REP. LAIBLE noted this bill is not retroactive. He said it is really a result of the Supreme Court action in the Conoco lawsuit. He said there has not been any litigation since the decision and there are 13-20 suits pending. He said if they don't pass this bill, the state will be deluged with lawsuits, and then they would be leaving it up to the Supreme Court to do the legislative work for them.

REP. MATTHEWS said this is a really important issue to the people of Montana. He said 99% of the businesses were run by really good people. He said if he ran a business and sent his employee out to shovel the walk it could be said that when he sent the employee out he was aware of the danger. "If my employee fell while shoveling, I might get sued," he said. "Let's pass this bill," he said.

REP. MUSGROVE said the bill gives large corporations a "skate" and pits small businesses against working families. He said this bill goes too far in one direction.

REP. STEINBEISSER called this a good bill. He said he hired employees and without this bill he would have no liability.

Vote: Motion carried 12-7 with Fritz, Gallik, Galvin-Halcro, Juneau, Keane, Musgrove, and Tramelli voting no.

REP. SLITER will carry the bill in the House.

{Tape : 3; Side : B; Approx. Time Counter : 11}

EXECUTIVE ACTION ON SB330

Motion: **REP. WHITAKER** moved that SB330 BE CONCURRED IN.

Discussion:

Motion: **REP. WHITAKER** moved that SB330 BE AMENDED.

Discussion:

HOUSE OF REPRESENTATIVES
ROLL CALL

HOUSE BUSINESS AND LABOR COMMITTEE

DATE MARCH 19, 2001

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
Rep. Joe McKenney	✓		
Rep. Gary Matthews	✓		
Rep. Roy Brown	✓		
Rep. Kathleen Galvin-Halcro			✓
Rep. Carol Juneau	✓		✓
Rep. Rick Laible	✓		
Rep. John Musgrove	✓		
Rep. Nancy Rice-Fritz	✓		
Rep. Don Steinbeisser	✓		
Rep. Jim Whitaker	✓		
Rep. Rod Bitney			✓
Rep. Sylvia Bookout-Reinicke	✓		
Rep. Dave Gallik	✓		
Rep. Dennis Himmelberger	✓		
Rep. Jim Keane	✓		✓
Rep. Bob Lawson	✓		
Rep. Bill Price	✓		
Rep. Brett Tramelli			✓
Rep. Allen Rome	✓		



HOUSE STANDING COMMITTEE REPORT

March 19, 2001

Page 1 of 1

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **Senate Bill 323** (third reading copy - blue) be concurred in.

Signed: _____

Joe McKenney
Representative Joe McKenney, Chair

To be carried by Representative Paul Sliter

- END -

Committee Vote:
Yes 12, No 7.

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House of Representatives

Roll Call Vote

BUSINESS & LABOR COMMITTEE

DATE 3-19-01 Bill NO. SB 323 NUMBERMOTION: REP. LAIBLE Do Concurr12-7 PASS

Name	AYE	NO
Rod Bitney, V.C., Majority (R)	✓	
Gary Matthews, V.C., Minority (D)	✓	
Roy Brown (R)	✓	
Dave Gallik (D)		✓
Kathleen Galvin-Halcro (D)		✓
Dennis Himmelberger (R)	✓	
Carol Juneau (D)		✓
Jim Keane (D)		✓
Rick Laible (R)	✓	
Bob Lawson (R)	✓	
Nancy Rice-Fritz (D)		✓
John Musgrove (D)		✓
Bill Price (R)	✓	
Sylvia Bookout-Reinicke (R)	✓	
Allen Rome (R)	✓	
Don Steinbeisser (R)	✓	
Brett Tramelli (D)		✓
Jim Whitaker (R)	✓	
Joe McKenney (R) Chairman	✓	
Count	12	7



AN ACT AMENDING THE EXCLUSIVE REMEDY PROVISION IN THE WORKERS' COMPENSATION ACT TO PROVIDE AN INJURED EMPLOYEE WITH A CAUSE OF ACTION FOR DAMAGES AGAINST AN EMPLOYER OR A FELLOW EMPLOYEE WHO CAUSES INTENTIONAL INJURY; DEFINING "INTENTIONAL INJURY"; AMENDING SECTION 39-71-413, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, Montana's workers' compensation law is the exclusive remedy for an employee injured or killed in the scope of employment, as included in Article II, section 16, of the Montana Constitution and implemented by the Legislature in section 39-71-411, MCA; and

WHEREAS, the exclusive remedy provision of workers' compensation can be described as a quid pro quo exchange of rights and remedies, which is intended to relieve an injured employee of the responsibility of undertaking lengthy and expensive legal action to recover compensation for job-related injuries by proving an employer's negligence while relieving the employer of the burden of defending against work-related claims through the traditional common-law defenses of contributory negligence, assumption of risk, and the fellow servant rule to defeat the employee's claim; and

WHEREAS, in 1973, the Montana Legislature enacted section 39-71-413, MCA, which allowed an injured employee to sue a servant or employee of the employer when the injury was the result of an intentional or malicious act by the servant or employee of the injured employee's employer; and

WHEREAS, in a 2000 decision, *Sherner v. Conoco, Inc.*, 2000 MT 50, 298 Mont. 401 (2000), the Montana Supreme Court revisited the standard used for determining whether an employer's act or omission was protected under the exclusive remedy; and

WHEREAS, the court applied section 39-71-413, MCA, to employers and held that actual malice, as described in section 27-1-221, MCA, which provides that a person acts with malice if an employer has knowledge of facts or intentionally disregards facts that create a high probability of injury and deliberately acts with conscious or intentional disregard or indifference to that high probability, would be the standard applied; and

WHEREAS, the exclusive remedy provision in the Workers' Compensation Act should provide that an injured employee has a cause of action for damages against an employer or the employer's employee only if the employer or fellow employee causes an intentional injury.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-413, MCA, is amended to read:

"39-71-413. Liability of employer or fellow employee for intentional and malicious and deliberate acts or omissions -- additional cause of action -- intentional injury defined. (1) If an employee ~~receives an injury~~ is intentionally injured by an intentional and deliberate act of the employee's employer or by the intentional and deliberate act of a fellow employee while performing the duties of his employment and ~~the injury or injuries so received by the employee are caused by the intentional and malicious act or omission of a servant or employee of his employer, then,~~ the employee or in case of his death ~~his~~ the employee's heirs or personal representatives ~~shall~~, in addition to the right to receive compensation under the Workers' Compensation Act, ~~have a right to prosecute any~~ have a cause of action ~~he may have~~ for damages against the ~~servants or employees of his employer causing the injury~~ person whose intentional and deliberate act caused the intentional injury.

(2) An employer is not vicariously liable under this section for the intentional and deliberate acts of an employee.

(3) As used in this section, "intentional injury" means an injury caused by an intentional and deliberate act that is specifically and actually intended to cause injury to the employee injured and there is actual knowledge that an injury is certain to occur."

Section 2. Effective date -- applicability. [This act] is effective on passage and approval and applies to injuries that occur on or after [the effective date of this act].

- END -